REMARKS

The Examiner rejected claims 1-9, and 14-18 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,400,681 to Bertin et al. ("*Bertin*"). The Examiner also rejected claims 10-13, 26 and 27 under 35 U.S.C. §103(a) as being upatentable over *Bertin* in light of U.S. Patent No. 6,047,331 to Medard et al. The foregoing amendment cancels claims 1, 2, 4, 10, 15, 26, and 27; amends claims 3, 5, 7, 8, 11, 12, 13, 14, 16, 17, 18; and adds claims 28-33. In light of the amendments and remarks below, a notice of allowance is requested for all pending claims.

Bertin Does Not Describe, Teach or Suggest the Invention of Independent Claims 28 and 31

In rejecting claims 1 and 15, the Examiner cited to *Bertin* as disclosing parsing packet header information to determine performance metrics associated with a selected path. Independent claims 1 and 15 have been cancelled and independent claims 28 and 31 have been added to clarify that the claimed invention uses packet header information to determine the data flow characteristics of a path the packet has already been routed along, and not—as the cited references teaches—for purposes of identifying a requested service level for the path the packet will be routed along.

Claims 28 and 31 require determining data flow characteristics by examining a first packet header and then using that information, together with active probing of alternative paths, to route a second packet. Determining information about a requested QoS level from the packet header, as described in *Bertin*, is quite different than using packet header information to identify actual data flow characteristics for the path the packet has already been routed along and then using those data flow characteristics, together with data flow characteristics obtained by actively probing another path, to select a preferred path for a second packet.

This distinction is further clarified in the new claims 28 and 31 by the requirement of "examining a packet header of a first packet that has been routed along a first path to determine data flow characteristics of the first path" which clarifies that
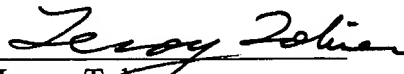
11

the data flow characteristics identified in the first packet are used not to determine a requested service level or for purposes of routing the first packet as described in *Bertin,* but to determine data flow characteristics for the first path that can be used in conjunction with data flow characteristics for other paths in subsequent routing decisions.

Claims 3, 5, 7, 8, 9, 11, 12, 13, 14, 29, and 30 depend from claim 28, and claims 16, 17, and 18 depend from claim 31 and thus contain all the limitations of the independent claims, which are believed to be in a state of allowance as discussed above. Claim 32 is directed towards a computer readable medium containing the same limitations as claim 28. Claim 33 depends from claim 32 and thus contains all the limitations of claim 32.

CONCLUSION

In light of the foregoing, it is respectfully requested that the rejection for the pending claims be removed. It is submitted that the application is in condition for allowance and a notice of allowance is respectfully requested. If there are any issues that can be resolved via a telephone conference, the Examiner is invited to contact the undersigned at 404.685.6483.

Respectfully submitted,

Leroy Poliver
Reg. No. 50,409

Kilpatrick Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
(404) 815-6500
KS File: 52224/294510